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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BENJAMIN SOMERLOTT,

11 Plaintiff,

12 v.

13 MCNEILUS TRUCK AND
14 MANUFACTURING INC,

15 Defendant.

CASE NO. C16-789-MJP

ORDER ON MOTIONS IN LIMINE

16 THIS MATTER comes before the Court on Plaintiff's Motions in Limine (Dkt. No. 105)
17 and Defendant's Motions in Limine (Dkt. No. 107.) Having reviewed the Motions, the
18 Responses (Dkt. Nos. 115, 117), and all related papers, the Court rules as follows:

19 **I. Plaintiff's Motions in Limine**

20 **Motion in Limine No. 1** seeks to prohibit any mention of "[a]ny proximate cause
21 opinions by any of the Defense expert witnesses that were not properly disclosed in Rule 26
22 disclosures." Plaintiff does not identify with sufficient specificity those opinions it seeks to
23 exclude. Plaintiff's Motion in Limine No. 1 is DENIED.

1 **Motion in Limine No. 2** seeks to prohibit “[a]ny mention of the Plaintiff’s L&I claim
2 regarding his right wrist including any written document that describes or references the claim.”
3 Plaintiff’s Motion in Limine No. 2 is GRANTED, with the exception that medical records
4 generated in connection with Plaintiff’s L&I claim be redacted of all references to the L&I claim.

5 **Motion in Limine No. 3** seeks to prohibit “[a]ny mention of the L&I [medical
6 examinations] regarding his right wrist,” which he contends are cumulative and duplicative. The
7 Court finds that the medical examinations reveal Plaintiff’s condition at various times during his
8 recovery and are relevant to determining whether his injury has prevented him from working.
9 Plaintiff’s Motion in Limine No. 3 is DENIED, with the exception that medical records
10 generated in connection with Plaintiff’s L&I claim be redacted of all references to the L&I claim.

11 **Motion in Limine No. 4** seeks to prohibit “[a]ny mention of the L&I claim regarding his
12 right shoulder.” Plaintiff’s Motion in Limine No. 4 is GRANTED, with the exception that
13 medical records generated in connection with Plaintiff’s L&I claim be redacted of all references
14 to the L&I claim.

15 **Motion in Limine No. 5** seeks to prohibit “[a]ny mention of the Defendant’s affirmative
16 defenses of negligence of third parties, intervening superseding acts of third parties, comparative
17 negligence and assumption of the risk, improper use and maintenance and altered condition and
18 failure to mitigate.” The Court finds that the motion is essentially a request for disposition of an
19 affirmative defense. Plaintiff’s Motion in Limine No. 5 is DENIED.

20 **Motion in Limine No. 6** seeks to prohibit “[a]ny mention of Defendant’s affirmative
21 defense of negligence of third parties.” The Court finds that the motion is essentially a request
22 for disposition of an affirmative defense. Plaintiff’s Motion in Limine No. 6 is DENIED.

1 **Motion in Limine No. 7** seeks to prohibit “[a]ny mention of Defendant’s affirmative
2 defense of assumption of the risk.” The Court finds that the motion is essentially a request for
3 disposition of an affirmative defense. Plaintiff’s Motion in Limine No. 7 is DENIED.

4 **Motion in Limine No. 8** seeks to prohibit “[a]ny mention of factual matters that
5 Defendant’s 30(b)(6) witness, Mr. Forgas, failed to answer or didn’t know the answer to.”
6 Plaintiff does not identify with sufficient specificity those factual matters it seeks to exclude.
7 Plaintiff’s Motion in Limine No. 8 is DENIED.

8 **Motion in Limine No. 9** seeks to prohibit “[a]ny mention of Defendant’s affirmative
9 defense of spoliation.” The Court finds that spoliation does not apply on the facts of this case.
10 Plaintiff’s Motion in Limine No. 9 is GRANTED.

11 **Motion in Limine No. 10** seeks to prohibit “[a]ny mention of any other information
12 regarding the IME conducted by Dr. Sun.” Plaintiff contends that Dr. Sun’s opinions were not
13 timely disclosed. The Court disagrees. Plaintiff’s Motion in Limine No. 10 is DENIED.

14 **Motion in Limine No. 11** seeks to prohibit “[a]ny mention of Defendant’s affirmative
15 defense of offset.” Defendant does not intend to assert this affirmative defense and does not
16 oppose the motion. Plaintiff’s Motion in Limine No. 11 is GRANTED.

17 **Motion in Limine No. 12** seeks to prohibit “[a]ny mention of the Plaintiff’s back injury,”
18 which apparently occurred years ago and has been asymptomatic at all times relevant to this
19 action. Plaintiff’s Motion in Limine No. 12 is GRANTED.

20 **Motion in Limine No. 13** seeks to prohibit “[a]ny mention of the lack of similar injuries
21 based upon Defendant’s records.” Plaintiff contends that because Defendant has no “in-house
22 injury database,” its claims regarding similar injuries are unreliable. The Court disagrees.
23 Plaintiff’s Motion in Limine No. 13 is DENIED.

1 **Motion in Limine No. 14** seeks to prohibit “[a]ny reference to unverified complaints.”
2 Defendant does not oppose the motion. Plaintiff’s Motion in Limine No. 14 is GRANTED.

3 **II. Defendant’s Motions in Limine**

4 **Motion in Limine No. 1** seeks to preclude “lay opinion testimony from Plaintiff or third
5 parties regarding design defect or the reasonableness and effectiveness of alternate designs.”
6 The Court finds that Plaintiff’s observations are not subject to the requirements of expert
7 testimony under Fed. R. Evid. 702. Defendant’s Motion in Limine No. 1 is DENIED.

8 **Motion in Limine No. 2** seeks to “exclude cumulative damage witnesses.” Defendant
9 does not identify which witnesses it seeks to preclude or how it might be prejudiced by their
10 testimony. Defendant’s Motion in Limine No. 2 is DENIED.

11 **Motion in Limine No. 3** seeks to preclude “Plaintiff from proceeding under the
12 consumer expectation test.” The Court finds that the motion is essentially a request for
13 disposition of a theory of the case. Defendant’s Motion in Limine No. 3 is DENIED.

14 **Motion in Limine No. 4** seeks to preclude “any argument for future lost wages or
15 earning capacity not based on Plaintiff’s initial disclosures,” namely the expert reports of Mr.
16 Cary or Mr. Bennett. Defendant does not identify with sufficient specificity those arguments or
17 opinions it seeks to exclude. Defendant’s Motion in Limine No. 4 is DENIED.

18 **Motion in Limine No. 5** seeks to exclude “any reptile theory, Golden Rule, or
19 conscience of the community arguments.” Plaintiff agrees that counsel will not “ask the jury to
20 put itself in the shoes of the Plaintiff,” and the Court will instruct the jury on the law, including
21 the standard for liability and the appropriate measure of damages. Defendant’s Motion in
22 Limine No. 5 is DENIED.

1 **Motion in Limine No. 6** seeks to exclude “reference to the number and location of
2 defense counsel and the size of their firms.” Plaintiff does not oppose the motion. Defendant’s
3 Motion in Limine No. 6 is GRANTED.

4 **Motion in Limine No. 7** seeks to preclude “Plaintiff from commenting on MTM’s
5 experts or corporate witness’ personal financial information beyond what compensation the
6 witnesses have received for their time addressing the issues involved in this case.” The Court
7 finds that while compensation received by expert and corporate witnesses is relevant to issues of
8 motive and bias, the specific details of such compensation is not. Defendant’s Motion in Limine
9 No. 7 is DENIED, with the exception that Plaintiff may not comment on the specific personal
10 financial information of Defendant’s corporate witnesses.

11 **Motion in Limine No. 8** seek to preclude “Plaintiff from offering argument or evidence
12 regarding MTM’s financial condition or suggesting that Plaintiff is entitled to punitive
13 damages.” Punitive damages are not at issue in this case. Defendant’s Motion in Limine No. 8
14 is GRANTED.

15 **Motion in Limine No. 9** seeks to preclude “any reference to Mr. Bennett or his opinions,
16 any mention of the circumstances regarding his attempted designation, or any attempt to explain
17 or address before a jury why MTM may present an economist but Plaintiff cannot.” Plaintiff
18 does not oppose the motion. Defendant’s Motion in Limine No. 9 is GRANTED.

19 **Motion in Limine No. 10** seeks to preclude “introduction of vocational rehabilitation
20 opinions regarding household services and domestic assistance not based upon statistically valid
21 basis.” Specifically, Defendant seeks to preclude Plaintiff’s vocational rehabilitation expert,
22 John Cary, from opining that Plaintiff will need professional home services and future household
23 and yard maintenance, and from estimating the costs of such services based upon “an
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1 unsubstantiated website called HomeAdvisor.com,” which “prices home services based on ad
2 hoc input from people who get paid to perform the services.” The Court finds that Mr. Cary’s
3 use of HomeAdvisor.com is not a reliable methodology. Defendant’s Motion in Limine No. 10
4 is GRANTED.

5 **Motion in Limine No. 11** seeks to preclude “introduction of opinions, evidence, or
6 testimony regarding the Ontario Guidelines.” The Court finds that the Ontario Guidelines
7 evidence an alternative design for side-loading commercial refuse trucks. Defendant’s Motion in
8 Limine No. 11 is DENIED.

9 The clerk is ordered to provide copies of this order to all counsel.

10 Dated January 8, 2018.

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13 Marsha J. Pechman
14 United States District Judge
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